

STATE OF NEW HAMPSHIRE
SITE EVALUATION COMMITTEE

SEC Docket No. 98-02

Application of AES Londonderry, LLC

Application of AES Londonderry L.L.C. for a Certificate of Site and Facility to construct and operate a 720 megawatt combined cycle natural gas fired power facility in the Town of Londonderry, Rockingham County known as the “AES Londonderry Cogeneration Facility or Project.”

**ORDER ON
MOTION BY THE TOWN OF LONDONDERRY
TO IMMEDIATELY REVOKE OR SUSPEND
CERTIFICATE OF SITE AND FACILITY**

On January 16, 2001, the Town of Londonderry (TOL) filed a pleading in this docket entitled: Motion by the Town of Londonderry to Immediately Revoke or Suspend Certificate of Site and Facility. The Certificate holder, AES Londonderry, LLC (AES), filed an objection to the motion on January 24, 2001. TOL and AES each filed replies to the other's objections.

The motion requests that this Committee immediately revoke or suspend the AES Certificate on the ground that AES has purportedly revoked its offer to provide low cost power from the certificated facility to TOL. After a review of the motion and the objections at a public meeting of the Committee on February 21, 2001, the Committee finds that an evidentiary hearing on the motion is unnecessary and that the motion should be denied.

TOL complains that AES has withdrawn an offer to provide low cost power which, based upon the pleadings filed by TOL, was made in February, 1999. TOL suggests that AES was required to provide low cost power at a fixed price to TOL as a condition of the Certificate. TOL also suggests that AES has acted unconscionably because TOL relied upon the offer of low cost power when appearing before this Committee during the adversarial proceedings in this matter which occurred in March of 1999.

TOL's argument misunderstands the terms and conditions of the certificate in this matter. The Committee did not and would not require terms for a power contract between the parties. During the course of the proceedings AES did represent that it would offer low cost power to TOL. However, the representations made by AES to the Committee did not include a firm commitment to the specific terms of such an offer. Pre-filed Testimony of Stephen V. Hase,

October 15, 1998¹; Transcript, 3/1/99, p. 54². AES witnesses testified that low cost power would be offered to TOL but never indicated the exact terms of such an offer. Moreover, it is clear that the offer required cooperation on the part of TOL. A power agreement was never presented to the Committee. Indeed, the Committee was unaware of the specific terms of the offer which was apparently made to TOL on or about February 26, 1999. The contract which was offered to TOL was not part of the record of the proceedings. In finding that granting the Certificate would be consistent with the State's energy policy, the Committee noted that TOL would have the *opportunity* to be the recipient of low cost power. Decision, p. 26. The Certificate did not require specific terms for the sale of low cost power nor did it require TOL to accept the power. The Committee's finding that the Certificate was consistent with the State's energy policy was also supported by considerations of electric system reliability, an increase in wholesale power generation for the region, and the retirement of older and "dirtier" generation sources. Decision, p. 26. The Committee's findings, although informed by the intention of AES to offer low cost power, were actually based upon the benefits which would be provided to the region and the citizens of the entire State.

It is also noteworthy that the conditions of the Certificate contain eleven (11) pages of stipulations between TOL and AES. Obviously, there were extensive negotiations between these parties at the time of the proceedings in this matter. An agreement to provide low cost power was not contained in the lengthy list of stipulations. It is unlikely that TOL relied, as it claims in its pleadings, upon an offer of specific terms for a power agreement.

TOL's pleadings also reveal that a specific agreement regarding the sale of low cost power from the facility to TOL was on the table for twenty-one months without acceptance by TOL. It is clear that AES attempted to comport with the representations it made to the Committee.

Finally the Committee cannot disregard the fact that TOL has apparently attempted to negotiate a "host community agreement" with AES which goes well beyond the terms and conditions of the Certificate. The terms of a "host community agreement" cannot supercede any

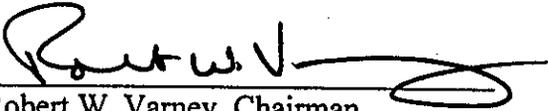
¹ "For the host community, Londonderry, AES will sell power at a low wholesale, reduced cost, to an *aggregator or purchasing cooperation* to be made available to all classes of Londonderry customers – residential, commercial, and industrial, thus passing on benefits to existing residences and businesses and potentially attracting more of the type of commercial and industrial development that Londonderry seeks. *We expect this to lead to about a 25% reduction compared to current electric rates.*" (Emphasis added.)

² ". . . we're trying to sell power at three cents per kilowatt hour for the first 100 million kilowatt hours to the Town. This allows the Town *to have really the ability to be a direct wholesale buyer* and take advantage of the benefits of this low cost production right at home, and then *make that power available to the citizens either as an aggregator or otherwise.*" (Emphasis added.)

of the terms or conditions of the Certificate. Whether the parties choose to enter into such an agreement is not within the purview of the Committee. However, it is important to note that AES has a valid Certificate of Site and Facility for the construction and operation of the plant. A "host community agreement" was not required by the conditions to the Certificate and AES is under no obligation to negotiate or enter into such an agreement. Nonetheless, the Committee fully expects that AES will, if permitted by TOL, continue to offer TOL low cost power consistent with the spirit of its representations before the Committee. The Committee declines to partake in such negotiations or to require specific terms.

The Committee finds that TOL's Motion to Immediately Suspend or Revoke Certificate of Site and Facility fails to set forth any grounds that would require suspension, revocation or any other enforcement action by the Committee. The Motion is **DENIED**.

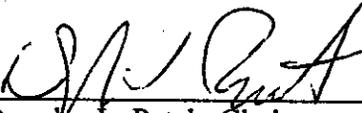
By Order of the Site Evaluation Committee this 23rd day of February, 2001.



Robert W. Varney, Chairman
Commissioner, Department of
Environmental Services



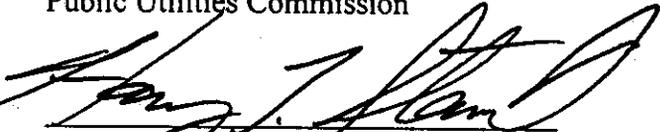
Kenneth A. Colburn, Director
Air Resources Division
Department of Environmental Services



Douglas L. Patch, Chairman
Public Utilities Commission



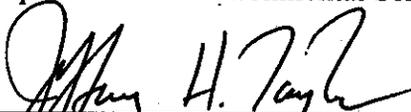
Deborah Schachter, Director
Governor's Office of Energy &
Community Services



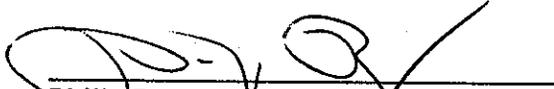
Harry T. Stewart, Director
Water Division
Department of Environmental Services



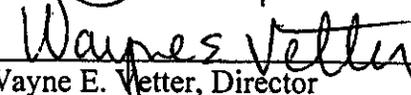
George M. Bald, Commissioner
Department of Resources & Economic
Development



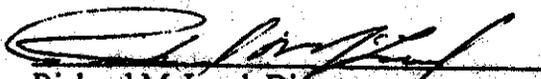
Jeffrey H. Taylor, Director
Office of State Planning

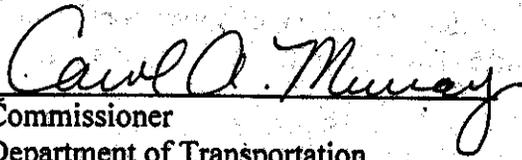


Philip Bryce, Director
Division of Forests & Lands
Department of Resources & Economic
Development

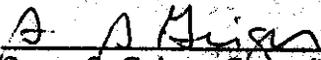


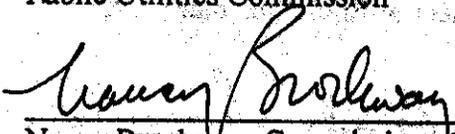
Wayne E. Vetter, Director
Fish and Game Department

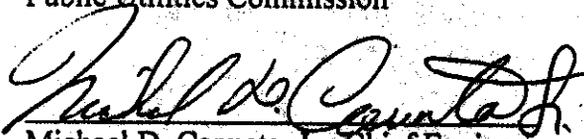

Richard McLeod, Director
Division of Parks
Department of Resources & Economic
Development


Asst Commissioner
Department of Transportation


Brook Dupee, Assistant Director
Office of Community & Public Health
Department of Health & Human Services


Susan S. Geiger, Commissioner
Public Utilities Commission


Nancy Brockway, Commissioner
Public Utilities Commission


Michael D. Cannata, Jr., Chief Engineer
Public Utilities Commission